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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

1100 WILSHIRE PROPERTY OWNERS ASSOCIATION, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents; 1100 WILSHIRE COMMERICAL, LLC, et al., Real Parties in Interest and Respondents.	B286266 (Los Angeles County Super. Ct. No. BS166153)

APPEAL from an order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Chatten-Brown & Carstens, Douglas P. Carstens, and Michelle Black for Plaintiff and Appellant.

Mike Feuer, City Attorney, Terry Kaufmann Macias, Assistant City Attorney and Donna Wong, Deputy City Attorney for Defendants and Respondent City of Los Angeles.

Glaser Weil Fink Howard Avchen & Shapiro, and Joel N. Klevens for Real Parties in Interest and Respondents 1100 Wilshire Commercial, LLC and 1100 Wilshire Garage LLC.

Plaintiff and appellant 1100 Wilshire Property Owners Association (the Association) appeals from an order denying its petition for a writ of mandate to compel defendant and respondent the City of Los Angeles (the City) to set aside building permits issued in 2015 to real parties in interest and respondents 1100 Wilshire Commercial and 1100 Wilshire Garage (collectively Wilshire Commercial) to convert guest parking spaces in a parking lot at 1100 Wilshire Boulevard in downtown Los Angeles to a private storage space. The Association complains that the court erred in entering judgment against it because the City issued the building permits in violation of development conditions in the subdivision tract map governing the property and that the City's effort to modify the parking condition violated the Los Angeles Municipal Code (LAMC) and the California Environmental Quality Act (CEQA). As we shall explain, the Association's claims are barred by the doctrine of collateral estoppel because they are a relitigation between the parties of the validity of the City's clarification of a parking condition. In addition, the Association has failed to demonstrate that CEQA applies to the parking condition. Accordingly, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

A. *The Project and Parking Condition No. 11.b*

In 1984, a 36-story, 255,000 square-foot office building and parking garage were constructed at 1100 Wilshire Boulevard (1100 Wilshire).

By the early 2000's tenants no longer occupied 1100 Wilshire, and in 2004, the property owner proposed expanding and converting the existing building into a "mixed-use" development that would have almost doubled the size of the building's interior and converted it into 460 residential units

and 39,000 square feet of commercial and retail space (the initially proposed project).

Given the proposed increase in size and scope of 1100 Wilshire, the City's planning department prepared a study under CEQA to determine the effect on the environment of the initially proposed project; and the City issued a mitigated negative declaration (MND) that determined that a number of "[e]nvironmental impacts may result" from project implementation, including "insufficient parking capacity on-site," but that "this potential impact will be mitigated to a level of insignificance" with the incorporation of environmental mitigation measures for on-site parking for residents and guests. To address the environmental impacts, the City's advisory agency of the planning department (advisory agency) developed "condition No. 11.b," which provided:

"The existing 697 on-site parking spaces shall be maintained and not reduced: (1) a minimum of [two] parking spaces plus [one-fourth of a] guest space per joint living and work unit shall be exclusively provided for joint living and work units; and (2) commercial parking shall be provided in compliance with the parking requirements of [LAMC] [s]ection 12.21[-A(4)] . . . for commercial uses on the site. Any remaining parking spaces shall be maintained and not reduced" (original condition No. 11.b).

B. *The Revised Project*

Thereafter, the developer reduced the size of the initially proposed project from 460 residential units and 39,000 square feet of commercial space to 267 residential units and 22,000 square feet of commercial space (the revised project). In May 2004, the City issued an addendum to the MND that recognized that the revised project had been substantially reduced in size from the initially proposed project. The addendum analyzed the

environmental impacts of the revised project and concluded that the revised project would not create any new significant impacts and would result in less significant or no impacts in all previously analyzed environmental impact categories of the MND. The addendum concluded that most, if not all, of the previously issued environmental mitigation measures, including those for onsite parking, were no longer necessary. The City, nonetheless, further determined that certain measures, including parking capacity, could be included as "site specific conditions" of the revised project. (Capitalization omitted)

On November 18, 2004, the advisory agency approved the revised project as a subdivision of 1100 Wilshire in vesting tract map No. 60706 (the VTM). In the VTM, original condition No. 11.b is listed as one of the "site specific conditions" (capitalization omitted); it was not included in the environmental mitigation measures or conditions imposed under CEQA for the revised project. In February 2005, the prior owner/subdivider recorded the required master covenant and agreement binding all future owners, which incorporated original condition No. 11.b. Thereafter, the VTM was recorded, and the revised project was constructed.[1]

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[1] The developer reduced the size of the revised project again; the actual project built consisted of 228 residential units and 12,000 square feet of commercial space. As built, 1100 Wilshire had somewhere in the range of 688-697 parking spots on multiple floors/levels of the parking garage.

C. *The Occupants of 1100 Wilshire*

1100 Wilshire is occupied by the owners/tenants of the residential condominium units and real parties in interest/respondents, Wilshire Commercial, the current owners of the single commercial condominium unit at 1100 Wilshire. The owners of the residential units are members of the Association, which manages 1100 Wilshire operations, including administration of parking rights among the owners. The Association's members and Wilshire Commercial each own a beneficial interest in the common areas and commonly held portions of the building. Wilshire Commercial owns the ground floor parking lot, and the Association's members have an easement for guest parking spaces in the ground floor lot.[2]

D. *Wilshire Commercial's Efforts to Alter the Parking Conditions at 1100 Wilshire*

In 2012, Wilshire Commercial applied to the City for building permits to change the use of a portion of the guest parking area (approximately 47 parking spaces) in the ground floor lot from guest parking spaces to private storage space, and the Los Angeles Department of Building and Safety (the Department of Building and Safety) initially issued permits for

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[2] Pursuant to original condition No. 11.b, 513 parking spaces were required for the residential units while 556 parking spaces were actually available for those units on the upper levels of the parking structure. Under original condition No. 11.b, 32 parking spaces were provided for the commercial unit in the ground floor parking lot and 135 parking spaces were available for parking in the ground floor lot. The 103 parking spaces in the ground floor lot in excess of the 32 required under condition No. 11.b, for the commercial unit, were designated as "guest parking."

the proposed conversion. In response, the Association filed a request that the permits be rescinded, pointing out that they violated the language in original condition No. 11.b, that all existing parking spaces, in addition to those expressly required in the condition, be "maintained and not reduced." As a result, the Department of Building and Safety revoked the permits, finding that the elimination of approximately 47 guest parking spaces and installation of storage space violated original condition No. 11.b of the VTM.

1. *2014 Letter of Clarification*

On September 29, 2014, allegedly at the urging of Wilshire Commercial, the advisory agency issued a letter of clarification ("2014 letter of clarification") to modify original condition No. 11.b of the VTM. The 2014 letter of clarification, modified original condition No. 11.b by eliminating the phrase "[t]he existing 697 on-site parking spaces shall be maintained and not reduced" and the sentence: "Any remaining parking spaces shall be maintained and not reduced" (revised condition No. 11.b).[3] The 2014 letter of clarification also provided that "[t]he subject site is unique in that while it is an approved adaptive reuse project, it was built in 1986 and contains a total of 698 parking spaces, which far exceeds today's required number of parking spaces and the number found in a typical . . . project." The 2014 letter of clarification allowed Wilshire Commercial to

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[3] Revised condition No. 11.b retained the language: "[A] minimum of [two] parking spaces plus [one-fourth of a] guest space per joint living and work unit shall be exclusively provided for joint living and work units; and . . . commercial parking spaces shall be provided in compliance with the parking requirements of [s]ection 12.21-A(4) of the [LAMC] for commercial uses on the site."

apply for building permits to eliminate approximately 47 guest parking spaces in the ground floor lot—reducing the guest parking area from approximately 103 spaces to 56 spaces—and to convert those parking spaces into storage without violating the site-specific parking condition, the revised condition No. 11.b.

In the spring of 2014, the Association and its members became aware that Wilshire Commercial was seeking a modification of original condition No. 11.b. In October of 2014, they received a copy of the 2014 letter of clarification and revised condition No. 11.b. When the Association inquired as to the "meaning and effect" of the 2014 letter of clarification, the City allegedly informed them that the 2014 letter of clarification was not subject to administrative appeal.

2. *2015 Building Permits*

On June 10, 2015, relying on revised condition No. 11.b, as authorized in the 2014 letter of clarification, the Department of Building and Safety issued building permits to Wilshire Commercial that permitted the conversion of certain guest parking spaces into storage space, which effectively eliminated approximately 47 to 49[4] guest parking spaces in the ground floor parking lot (2015 building permits).

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[4] The record before this court is not clear as to the exact number of parking spaces that were eliminated under the 2015 building permits. It appears that something in the range of 47 to 49 guest parking spaces in the ground floor parking lot were converted into storage pursuant to the permits.

E. *Association's Administrative Appeal of the 2015 Building Permits*

On July 15, 2015, the Association filed an administrative appeal with the Department of Building and Safety director of planning requesting that the City revoke the approval of the 2015 building permits (the administrative appeal). The Association claimed that the 2014 letter of clarification was invalid because it was issued in violation of the notice and hearing procedures provided in the LAMC, and that the 2015 building permits (issued based on revised condition No. 11.b as authorized by the 2014 letter of clarification) should be revoked because they failed to comply with original condition No. 11.b of the VTM. The Department of Building and Safety denied the Association's request. It stated that it relied on the 2014 letter of clarification in issuing the 2015 building permits. The Department of Building and Safety determined that the number of parking spaces provided in the 2015 building permits conformed to revised condition No. 11.b. The Association appealed the denial to the City's zoning administrator.

In April 2016, in the administrative appeal, the zoning administrator upheld the Department of Building and Safety's approval of the 2015 building permits. The zoning administrator determined that the Department of Building and Safety had no authority or obligation to review the validity of the 2014 letter of clarification; the Department of Building and Safety's only duty was to assure that the applicant complied with the current VTM conditions, which included revised condition No. 11.b and that the Department of Building and Safety had done so and, therefore, did not err in issuing the 2015 building permits.

The Association then appealed the zoning administrator's decision to issue the building permits to the area planning commission, which affirmed the zoning administrator's decision. The area planning commission decided that, because the time to challenge the 2014 letter of clarification had expired, the Department of Building and Safety was entitled to rely on the revised condition No. 11.b as authorized by the 2014 letter of clarification in issuing the 2015 building permits. On August 16, 2016, the area planning commission issued a determination letter denying the administrative appeal.

F. *Prior Legal Action*

On July, 30, 2015, shortly after the Association filed the administrative appeal of the 2015 building permits, the Association also filed a petition for a writ of mandate in the Los Angeles County Superior Court (*1100 Wilshire Property Owners Association v. City of Los Angeles* (Super. Ct. L.A. County, 2016, No. BS157055) challenging the legal validity of the 2014 clarification letter and seeking orders (1) requiring the City to set aside the 2014 letter of clarification; (2) requiring the City and Wilshire Commercial to comply with original condition No. 11.b in the VTM; and (3) directing Wilshire Commercial to restore the guest parking spaces that had been converted to storage (the prior legal action). The Association alleged, inter alia, that the advisory agency lacked the legal authority to revise the original condition No. 11.b through a letter of clarification and that the City had failed to comply with the tract map modification due process requirements set forth in LAMC section 17.14, requiring a public hearing, notice to the owners/occupants and a right to appeal. The Association also alleged that original condition No. 11.b was an "environmental

mitigation measure" imposed to comply with CEQA and that any modification of such a measure must comply with CEQA.

On June 9, 2016, the superior court denied the petition in that action (hereinafter prior action) on the ground that the statute of limitations barred the claims.[5] The Association did not appeal.[6]

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[5] The court also stated in dictum that, assuming arguendo, a timely challenge had been made to the 2014 clarification letter, based on the evidence then before it, the trial court would have found the 2014 letter of clarification to be invalid for the failure to comply with the due process requirements in the LAMC. Specifically, the court stated that "the [a]dvisory [a]gency did not follow these procedures required by LAMC sections 17.11 and 17.14" for modifying a recorded map, including proper notice, a public hearing, and findings.

[6] On November 10, 2015, while the Association's administrative appeal of the 2015 permits and prior action were simultaneously pending, Wilshire Commercial applied to the City for a *modification* of VTM condition No. 11.b, following the procedures set forth in LAMC section 17.14. According to Wilshire Commercial, it submitted the request to make the site parking conditions identified in the 2014 letter of clarification "clear." On June 8, 2016, the advisory agency held a public hearing on Wilshire Commercial's request, and at the conclusion of the public hearing, the advisory agency orally announced its intent to deny the request.

On June 17, 2016, *before* the advisory agency could issue a final written decision on the modification request, and *after* the trial court denied the Association's petition for a writ of mandate in the prior action, Wilshire Commercial withdrew its application and terminated the modification proceedings. The advisory agency recognized that the proceedings had been terminated as of June 29, 2016 and noted that no "formal final action" had been taken on the application. Despite terminating the proceedings, the advisory agency "recommended" in its file to deny the request

G. *Current Action*

On November 14, 2016, following the area planning commission's denial of the administrative appeal, the Association again filed a petition for writ of mandate, now seeking to compel the City and area planning commission to set aside the determination letter, to compel the City to honor the original condition No. 11.b in the VTM, and to compel Wilshire Commercial to restore the guest parking spaces that it had converted to storage. The Association alleged that the 2015 building permits must be set aside because they were based on the 2014 letter of clarification, which itself was void ab initio. The Association also alleged that original condition No. 11.b was an environmental mitigation measure implemented pursuant to CEQA, that compliance with CEQA was required to modify original condition No. 11.b, and that the City violated CEQA by issuing the 2015 building permits.

On August 17, 2017, the trial court denied the petition. The court viewed the Association's claims as a renewed challenge to the 2014 letter of clarification, and thus, collateral estoppel barred relief because that challenge had already been rejected in the prior action, which was a final decision. The court rejected the Association's argument that, because the clarification letter was void, the prior action did not collaterally estop the Association's current challenge. The court also denied the Association's CEQA claim, finding that after the initially proposed project was reduced in size and scope, original condition No. 11.b was imposed as a "site specific" condition not subject to CEQA, and thus, the 2015 building permits did not violate CEQA.

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in the event Wilshire Commercial ever reapplied for a modification.

The Association timely appealed.

DISCUSSION

Here, the Association argues that the 2015 building permits must be set aside because they are based on revised condition No. 11.b in the 2014 letter of clarification, which was issued without complying with LAMC section 17.14 and CEQA.

Our standard of review of a judgment denying a petition for writ of administrative mandate is the same as that of the trial court; we must determine if the decision is supported by substantial evidence in light of the whole record. (Code Civ. Proc., § 1094.5, subd. (c); *Blazevich v. State Bd. of Control* (1987) 191 Cal.App.3d 1121, 1125.) This notwithstanding, the application of the doctrine of collateral estoppel presents a question of law, subject to de novo review. (*Groves v. Peterson* (2002) 100 Cal.App.4th 659, 667.) Likewise where no dispute about the evidence exists, or where the focus of the dispute is on the meaning of statutes, the appellate court is presented with a question of law that we review de novo. (*Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 237, 241; *Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 524.) Under all possible applicable standards of review, the Association has failed to demonstrate that the trial court erred in denying its petition.

A. *Claim to Revoke the 2015 Building Permits and Enforce the Original Condition 11.b*

The Association's claim, seeking an order requiring the City to set aside the area planning commission's denial of its administrative appeal of the 2015 building permits and compelling compliance with original condition No. 11.b, fails.

Because the Association seeks to set aside the 2014 letter of clarification based on the same arguments rejected in the prior action, the action is barred under the doctrine of collateral estoppel.

Collateral estoppel, or issue preclusion, bars a party from relitigating issues actually litigated and finally decided against it in the earlier action. (*Direct Shopping Network, LLC v. James* (2012) 206 Cal.App.4th 1551, 1556–1557.) An issue is "actually litigated" for purposes of collateral estoppel only if it was properly raised, submitted for determination, and decided in the prior proceeding. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511–512.) A corollary of the rule that collateral estoppel is confined to issues "actually litigated' is the requirement that the issue decided previously be "identical" with the one sought to be precluded. (*Direct Shopping Network, LLC v. James, supra,* 206 Cal.App.4th at p. 1556.) The "identical issue" requirement addresses whether the same factual allegations are at stake in the two proceedings. (*Hernandez, supra,* 46 Cal.4th at p. 511.) An issue decided in a prior proceeding establishes collateral estoppel even if some factual matters or legal theories that could have been presented concerning that issue were not presented. (*Bridgeford v. Pacific Health Corp.* (2012) 202 Cal.App.4th 1034, 1042–1043.)

Here, although the Association did not litigate the validity of the 2015 building permits in the prior legal action, the success of its attack on the building permits in this action depends on whether the City properly issued the 2014 letter of clarification that authorized revised condition No. 11.b. To set aside the 2015 building permits, thus, required the Association to demonstrate that the City issued the 2014 letter of clarification in violation of the LAMC and that the City mistakenly relied on the 2014 letter of clarification to modify original condition No. 11.b of the VTM.

The Association, however, already litigated the issues of whether the City violated the LAMC when the City issued the 2014 letter of clarification and the validity of revised condition No. 11.b in the prior action. Consequently, the underlying issues in the current action present identical factual allegations as those at issue in the prior legal action. In addition, those issues were "actually litigated" before. Although the trial court in the prior action rejected the Association's challenge to the 2014 letter of clarification because the challenge was time-barred, the doctrine of collateral estoppel applies to matters decided on statute of limitations grounds. (See *McClain v. Rush* (1989) 216 Cal.App.3d 18, 28–29 [holding that the merits of a matter is "actually litigated" for purposes of collateral estoppel where the matter has been dismissed on the basis of the statute of limitations], italics omitted.) The court's prior conclusion concerning the statute of limitations operates to collaterally estop any future attack on the 2014 letter of clarification no matter how recharacterized or repackaged. And having failed to appeal from the court's order denying the petition in the prior action the issues decided in that action have been finally decided for the purposes of collateral estoppel.

Further, none of the arguments Association asserts to avoid the application of collateral estoppel is persuasive.

First, the Association asserts collateral estoppel should not apply because of the public interests at issue. The Association did not, however, assert the public interest exception in the trial court, and thus we need not consider its application on appeal. (*Bhatt v. State Dept. of Health Services* (2015) 133 Cal.App.4th 923, 933 ["a party who fails to raise an issue in the trial court has therefore waived the right to do so on appeal"].) In any event, because this case involves a dispute among private parties over the use of guest parking spaces in a private building, the

Association has not demonstrated that the public interest exception should apply. (See *Housing Authority v. Workers' Comp. Appeals Bd.* (1998) 60 Cal.App.4th 1076, 1086 [declining to apply the public interest exception to case involving a dispute between an entity and its employees, litigating a discrete issue].)

Second, the Association attempts to avoid the collateral estoppel effect of the trial court's prior decision by asserting an attack on the 2014 letter of clarification which it did not expressly articulate in the prior action. Specifically the Association claims here that the 2014 letter of clarification was void ab initio—that the advisory agency lack legal authority to issue it—and therefore any challenge to the letter was subject to a four-year statute of limitations in the Code of Civil Procedure rather than the 90-day statute of limitations in Government Code section 66499.37. As the trial court properly concluded in this action, however, the advisory agency's indisputably had subject matter jurisdiction and express authority to alter the parking condition (see Gov. Code, § 66472.1; L.A. Mun. Code, §§ 17.03, 17.11, 17.14), and thus its action was not void. To the extent the advisory agency committed any error in issuing of the 2014 letter of clarification, the action of the advisory agency was voidable, subject to the 90-day statute of limitations in the Government Code rather than void ab initio. (See *Gonzalez v. County of Tulare* (1998) 65 Cal.App.4th 777, 789 [recognizing that land use decisions of a government agency are voidable, rather than void and thus they are subject to a 90-day statute of limitations in Government Code section 65860].) Thus, we agree with the trial court; the Association's claim that the 2014 letter of clarification was "void" does not salvage its claim for relief in this action.

The Association further urges we give effect to the trial court's statement in the order denying the prior petition that

if the Association had timely brought the prior action, the court would have ruled that the advisory agency failed to follow required procedures and reversed the agency's grant of the clarification. We decline to do so because the statement has no legal consequence as the court denied the petition on statute of limitation grounds.

Lastly, the Association argues that the advisory agency's recommendation to deny the *modification* request, made after it issued the 2014 *clarification* letter, acts to collaterally estop Wilshire Commerical from relying on the earlier grant of modification. We disagree. The modification request was withdrawn before formally acted on, and therefore, as the advisory agency acknowleged, its recommendation was not a final decision. (*See Smith v. Selma Community Hospita*l (2008) 164 Cal.App.4th 1478, 1506 [finality for the purposes of collateral estoppel means the decisionmaker has determined the matter to be "final"].)

Given the preceding, the court properly rejected the Association's first cause of action in the writ petition.

B. *The CEQA Violation Claim*

The court also properly rejected the Association's cause of action in the petition alleging a violation of CEQA. The Association asserted that original condition No. 11.b was imposed as a CEQA mitigation measure in the VTM and that the City failed to comply with the procedural requirements of CEQA when it issued revised condition No. 11.b based on the 2014 letter of clarification. We agree with the trial court's concluion that this claim fails because original condition No. 11.b was not imposed as an environmental mitigation measure and, thus, modification of the condition did not require compliance with CEQA.

When a condition is imposed as a result of a CEQA analysis, then any subsequent modification of that mitigation condition requires compliance with CEQA. (See *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445.) In contrast, where a condition is imposed as a general project condition, compliance with CEQA is not required before modification of that condition. (*Ibid*.)

Here, substantial evidence in the record demonstrates that although original condition No. 11.b was proposed as an environmental mitigation measure for the initially proposed project, after the revised project was reduced in size, the original condition No. 11.b was deemed as "no longer necessary" as an environmental mitigation measure. As the trial court found, the advisory agency ultimately adopted original condition No. 11.b as a site-specific condition. As a result, the City was entitled to modify original condition No. 11.b, without complying with CEQA. Thus, the issuance of revised condition No. 11.b, based on the 2014 letter of clarification, did not violate CEQA, and the trial court did not err in denying the Association's relief on its CEQA claim.

DISPOSITION

The order denying the petition for a writ of mandate is affirmed. Respondents are entitled to an award of their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

JOHNSON, J.

BENDIX, J.